**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 3195/2005

SHYAM SUNDER AGARWAL
v
SMT. MEERA DEVI & ORS.

Date of Judgment: 22nd NOVEMBER, 2006

Hon'ble Mr. Justice R. S. Chauhan

Mr. M.C. Jain for the appellant.
Mr. Anil Jain and Mr. S.R. Saini with
Mr. Ram Avtar Saini for the respondents.

By Court:

The appellant has challenged the order dated 17.10.05 whereby the learned Addl. District & Sessions Judge (FT) No. 2, Sikar has dismissed the application for temporary injunction.

Briefly the facts of the case are that the respondent No.1 is the owner of Khasra No. 1849 and Khasra No. 1825 in Ringas, District Sikar. On 7.5.2005 the respondent No. 1 had agreed to sell part of these two Khasras to the appellant and respondent No. 2. The consideration for the sale was said to be Rs. 14,25,000/- and agreement to sell was signed on 7.5.05, whereunder an amount of Rs. 1,25,000/- was paid by the appellant to the respondent No. 1. It was also agreed that on 20.6.05, the remaining amount of Rs. 13,00,000/- shall be paid and a sale-deed shall be registered.

According to the agreement, in case the respondent No. 1 failed to carry out her commitment to get the sale-deed registered, then she would be liable to return four times the amount paid as advance money. According to this agreement, half of the property was sold to the appellant and the other half was sold to the respondent No. 2. The appellant further pleaded that he is willing to pay the rest of the consideration amount. But, the respondent No.1 is refusing to get the sale-deed registered. He further alleged that respondents Nos. 2 to 4 are related to each other and they have entered into a conspiracy whereby the respondent No. 1 has agreed to sell the property in dispute to them and for this purpose they have entered into a sale-deed whereby the said land has been sold to them. Therefore, he prayed that the sale-deed shall be declared as null and void and prayed for a permanent injunction. Alongwith the plaint an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure (henceforth to be referred to as 'the Code', for short) was also filed. The respondent No. 1 and 2 filed their written statement wherein they emphatically denied the averments made by the appellant. After hearing both the sides vide order dated 17.10.05 the learned trial court has dismissed the application for temporary injunction. Hence, this appeal before this Court.

Mr. M.C. Jain, the learned counsel for the appellant, has strenuously argued that since he has paid the advance amount of

Rs. 1,25,000/-, he has a strong prima facie case for getting the sale-deed cancelled. However, Mr. Anil Jain, the learned counsel for respondents, has contended that according to the agreement to sell the appellant is only entitled to receive four times the advance payment paid by him, from the respondent No.1. Therefore, he can only sue for damages and not for cancellation of the sale-deed. He has, thus, supported the impugned order.

We have heard the learned counsel for both the parties and have perused the impugned order.

A bare perusal of the order dated 17.10.05 clearly reveals that the learned trial court has discussed the existence of the prima facie case in detail. While discussing the balance of convenience the learned trial court has correctly held that according to the agreement to sell the appellant is entitled only for damages. Moreover, there is no evidence to show that the appellant is in possession of the land in dispute. Since cogent reasons have been given by the learned trial court, this Court is not inclined to interfere with the impugned order.

In the result, there is no merit in this appeal. It is, hereby, dismissed. There shall be no order as to costs.

(R.S. CHAUHAN) J.

MRG.